Eugene Planning Commission

AGENDA

Meeting Location:
Bascom-Tykeson Room—Eugene Public Library
100 W. 10th Avenue
Eugene, OR 97401

Phone: 541-682-5481
www.eugene-or.gov/pc

The Eugene Planning Commission welcomes your interest in these agenda items. Feel free to come and go as you please at any of the meetings. This meeting location is wheelchair-accessible. For the hearing impaired, FM assistive-listening devices are available or an interpreter can be provided with 48 hours notice prior to the meeting. Spanish-language interpretation will also be provided with 48 hours notice. To arrange for these services, contact the Planning Division at 541-682-5675.

MONDAY. DECEMBER 3, 2012 – REGULAR MEETING (11:30 a.m. to 1:30 p.m.)

11:30 a.m. I. PUBLIC COMMENT

The Planning Commission reserves 10 minutes at the beginning of this meeting for public comment. The public may comment on any matter, **except for items scheduled for public hearing or public hearing items for which the record has already closed.** Generally, the time limit for public comment is three minutes; however, the Planning Commission reserves the option to reduce the time allowed each speaker based on the number of people requesting to speak.

11:40 a.m. II. DEERBROOK PUD APPEAL DELIBERATIONS (PDT 12-1)

Staff: Becky Taylor, 541-682-5437

1:20 p.m. III. ITEMS FROM COMMISSION AND STAFF

A. Other Items from Staff
B. Other Items from Commission:
C. Learning: How are we doing?

Commissioners: Steven Baker; Jonathan Belcher; Rick Duncan; Randy Hledik, Chair; John Jaworski; Jeffery Mills; William Randall, Vice Chair

AGENDA ITEM SUMMARY
December 3, 2012

To: Eugene Planning Commission

From: Becky Taylor, Associate Planner, Eugene Planning Division

Subject: Appeal of Hearings Official Decision: Deerbrook PUD (PDT 12-1)

ACTION REQUESTED

This is the first deliberation meeting following the November 14, 2012 public hearing of the Deerbrook PUD (PDT 12-1) appeal. The Planning Commission's (PC) task is to address the "preliminary issues" outlined in Attachment 1 and the appeal issues, as outlined in Attachment 2. If the commission is unable to finish its deliberations on December 3rd, it will be necessary to resolve any remaining appeal issues and act on a final order at the second deliberation meeting scheduled for December 10th. The PC's decision – to affirm, reverse, or modify the Hearings Official's (HO) decision – is due by December 11, 2012, in order to meet the 120-day statutory deadline.

BACKGROUND INFORMATION

Several issues have been a point of focus throughout the application process and have been discussed in the hearing testimony. Questions about the Buildable Lands Inventory (BLI) have emerged regarding the subject PUD; however, staff notes that the BLI neither prescribes a particular density for the subject property nor serves as approval criteria for the subject PUD application. Staff advises the PC to avoid mixing these separate conversations. Although the Envision Eugene documentation is still in draft form (the City's current BLI was adopted in 1999), most testimony about the BLI has referenced the Envision Eugene work. Staff responded to the concerns about the BLI raised by the Home Builders Association (HBA) in the June 2012 Staff Report to the HO, noting that the analysis developed for the Envision Eugene process estimated that the subject property could reasonably accommodate 37 single-family dwellings. Although that analysis is not adopted, nor does it regulate any minimum or maximum density that could ultimately be developed on the subject property, it provides context when considering arguments about the 75-lot development plan versus the 47-lot development.

With regard to the applicant's 47-lot illustration versus its 75-lot proposal, the PC needs to be very clear that the PUD application is for 75 lots (see Appeal Issue 8 in Attachment 2.) Contrary to the Applicant's testimony, staff did not design the 47-lot proposal; that plan was prepared by the Applicant in response to conditions of approval that were recommended by staff.

Many of the appeal issues hinge on the PC's conclusion regarding the slope criterion. That criterion is EC 9.8325(5), which states: "There shall be no proposed grading on portions of the development site that meet or exceed 20% slope." While the City has consistently informed the applicant that a PUD site's slope is determined based on 5-foot contour intervals, the applicant continues to argue for a

different means of determining the slope of its site. The PC has asked staff to specifically explain the relationship between the 5-foot contour intervals of the PUD application form and the 20-foot contours of the South Hills Study. The Applicant asserts that 20 feet is more valid than 5 feet. This question has been framed by the Applicant to create doubt about the clear and objective nature of the slope criterion to assert that the 20% slope standard should be thrown out. Staff addresses this issue in detail under Appeal Issue #1 on Attachment 2.

The Applicant/HBA also assert that without the slope criterion, or with the slope criterion being applied at 20-foot contours, that the entire site could be built – the 75 lot plan; however, staff has consistently noted that the eastern portion of the site has infrastructure and service issues (wastewater, water, and particularly stormwater) that have not been resolved or addressed in a manner that satisfies the applicable approval criteria [i.e., EC 9.8325(7)(b) and EC 9.8325(7)(j), the related public improvement standards at EC 9.6500 through 9.6505, and stormwater development standards at EC 9.6791 through EC 9.6797] or that could be reasonably conditioned. In other words, staff believes the 75-lot plan cannot be approved, regardless of the slope question.

PLANNING COMMISSION'S REVIEW ROLE

Based on procedural requirements set forth in the Eugene Code (see EC 9.7655), the PC may address only those issues set out in the appeal statements submitted on October 3, 2012. Further, the PC limits its consideration to the evidentiary record established before the HO; the PC may not accept new evidence, except that which it officially notices. The City Attorney has advised that the PC should not use its authority to take official notice of material that would be new evidence when it is considering an appeal that otherwise prohibits new evidence, like this one.

The code requires that the PC review be focused entirely on the question of whether or not the HO failed to properly evaluate the application or make a decision consistent with the applicable criteria. Those criteria are the Tentative PUD – Needed Housing Approval Criteria at EC 9.8325, to the extent they are implicated by the appeals. In the event that the PC finds the HO erred in denying the request and chooses to reverse the decision, the PC is required to provide specific findings of fact as to why the decision was in error. The PC cannot reverse the decision without such findings.

As discussed at the public hearing, staff emphasizes that the PC's decision is required no later than December 11th to meet the 120-day statutory time limit. The PC decision must be made in accordance with the procedures for appeals at EC 9.7650 through EC 9.7685.

ATTACHMENTS

The specific action items to be addressed by the PC are attached. The first attachment is a list of preliminary issues that the PC needs to decide upon at the outset of deliberations in order to determine what may be considered by the PC in its decision-making process. The second attachment is a summary of the appeal issues and staff's analysis of the issues. The third attachment is a staff response to Planning Commissioners' questions following the public hearing.

1. Preliminary Issues
2. Appeal Issues and Staff Response
3. Staff Response to Planning Commissioners' Questions

The entire record of materials for the subject application, including the public hearing exhibits, is available for review at the Eugene Planning Division offices, and will be provided to the PC under separate cover.

FOR MORE INFORMATION:
Please contact Becky Taylor, Associate Planner, Eugene Planning Division, by phone at (541) 682-5437, or e-mail at becky.g.taylor@ci.eugene.or.us

ATTACHMENT 1: PRELIMINARY ISSUES

Preliminary issues are those raised by the appellants that are more procedural or evidentiary in nature. Four "preliminary issues" were identified by the appellants prior to the public hearing, as outlined in the November 14, 2012 Agenda Item Summary (AIS) - Attachment 1. At the hearing, three additional procedural/evidentiary issues were raised. Additionally, both appellants submitted written testimony to staff after the close of the record on November 14, 2012; staff recommends the PC not consider these documents, although staff notes that the contents only elaborate on the same arguments made at the hearing.

These issues need to be decided by the PC at the outset of deliberations in order to determine what may be considered by the PC in its decision-making process. Staff's summary and recommendation is provided below.

1. SEN Request that the PC Dismiss the HBA from Deerbrook Appeal

Request: This issue was addressed in the November 14, 2012 AIS and is restated here.

Relevant Code Text:
EC 9.7655(1)(d) specifies that "[a]ny person who submitted written comments in regard to the original application" may appeal a Hearings Official's decision.

On October 5, 2012:
The SEN submitted a request that the PC "dismiss" the HBA from the Deerbrook Appeal. The SEN assert that:

1) The HBA's written comments to the HO were prepared before the applicant formally submitted its application to the City and, therefore, must not have been "in regard to the *original application*";
2) The HBA comments did not "raise any issues of substance concerning the Applications' compliance with the requisite code criteria";
3) The HBA should have submitted its own appeal form and fee and should not be allowed to join the Applicant's appeal; and
4) It appears the HBA did not sign the appeal statement or appeal form.

On October 9, 2012:
The Applicant/HBA submitted a response, first noting that SEN's request is pointless since, if it was approved, nothing would change; it would merely result in striking some references to the HBA from the appeal documents (the appeal would otherwise remain as it is filed and the HBA would simply testify as a participant in the hearing before the PC). In response to SEN's issues, the Applicant/HBA assert that:

1) The February 23, 2012 HBA letter was dated after the neighborhood meeting where the development plan (later submitted with the application) was presented to the neighborhood, so the comments were "in regard to the *original application*"; and

2) The code does not require that an appellant's comments be substantive as to the applications' consistency with specific criteria;
3) The code does not prohibit multiple persons from filing a joint appeal; and
4) The HBA did sign the appeal form and was not required to sign the appeal statement (like SEN's appeal statement, the Applicant/HBA's appeal statement was signed only by the attorney).

On October 11, 2012: The SEN submitted a reply to HBA's response, stating that

1) "The Code does not allow for HBA to circumvent this process by 'pre-commenting' on a developers proposed plans *before* those plans have actually been transcribed onto a formal application and officially filed with the City"; and
2) The HBA's comments to the HO did not include any of the issues now raised in the appeal and HBA should be limited to raising issues that *it* raised to the HO. Specifically, HBA did not raise before the HO the argument that the code should be interpreted in such a way that "allows property in the Buildable Lands Inventory to be developed under clear and objective standards."

Staff Recommendation:

Staff recommends that the Planning Commission deny SEN's request because HBA has clearly satisfied the City's requirements for filing an appeal.

1) Staff finds that the February 23, 2012 HBA letter qualifies as "written comments in regard to the original application." The date on the HBA letter is immaterial. A copy of the HBA letter was submitted for the Hearings Official's consideration in regard to the application that originated this appeal and it clearly relates to that application. This is consistent with the code text at EC 9.7655(1)(d). The letter specifically refers to PDT 12-1 and states, in part: "I have reviewed the Site Plan and narrative for the PUD, which will go to public hearing in late June. This project, proposing 75 lots on 26 acres in the South Hills, to be reviewed under the Needed Housing Standards, is a case study for the reasonableness of the density assumptions for the BLI in the South Hills." The June 2012 staff report specifically identified and responded to the February 23, 2012 HBA letter.
2) There is no code requirement that, to file a local appeal, the appellant must have raised an issue as to the application's consistency with a particular criterion. The code does require that every appeal issue must have been raised somewhere, by someone, in the HO's record [EC 9.7655(3)]. SEN argues that "HBA did not raise before the hearings official the argument that the code should be interpreted in such a way that allows property in the Buildable Lands Inventory to be developed under clear and objective standards." However, that issue was raised by the Applicant as part of its September 12, 2012, final argument, where it states and elaborates on the following argument: "[t]he statutory scheme anticipates that land inventoried in the acknowledged BLI for housing is to be developable for

housing under clear and objective standards, not off-limits to development under clear and objective standards."

3) There is no code requirement that prohibits numerous persons or entities from joining in a single appeal. In this case, where there is a single appeal form and a single narrative, with one individual representing both appellant parties (attorney Bill Kloos).

4) Contrary to SEN's assertion, the HBA did sign the appeal form and was not required to sign the appeal statement (like SEN's appeal statement, the applicant/HBA's appeal statement was signed only by the attorney).

Therefore, staff recommends that the PC take the safest legal approach (for the reasons described above): to deny SEN's request.

PC Action: Does the PC agree with staff's recommendation to deny SEN's request because the HBA has clearly satisfied the City's requirements for filing an appeal?

☐ Yes.

☐ No – The PC finds that the HBA failed to adequately address the requirements of EC 9.7655(1)(d) because _____.

2. SEN Request that the PC Strike Portions of the Applicant/HBA Appeal

Request: This issue was addressed in the November 14, 2012 AIS and is restated here.

Relevant Code Text:
EC 9.7655 Filing Appeal of Hearings Official or Historic Review Board Initial Decision provides at (2) that "No new evidence pertaining to appeal issues shall be accepted."
EC 9.7655 Filing Appeal of Hearings Official or Historic Review Board Initial Decision provides at (3) that the basis of an appeal "is limited to the issues raised during the review of the original application."

On October 5, 2012:
The SEN objects to what it identifies as new evidence and issues introduced in the Applicant/HBA appeal:

(1) The alleged new evidence is the set of figures submitted by the Applicant/HBA to support its critique of Kevin Matthew's slope map at pages 8-9 of the Applicant/HBA Appeal Statement; and

(2) The alleged new issue is addressed in the Applicant/HBA's first assignment of error (sections 3 and 4) asserting that the "Matthews Map" has methodological flaws that are not in the staff map, at pages 6-12 of the Applicant/HBA appeal.

On October 9, 2012:
The Applicant/HBA responded, asserting that there is no new evidence in their

appeal statement. They argue that the two graphics on page 8 of their appeal statement are evidence excerpted from the record, displaying the same small part of the site plan, one graphic taken from Sheet L2.0 of the Applicant's plan and the other a "re-creation" of the "Matthews Map." Also, they provide a different set of graphics for the PC to consider, in case the PC determines that the "re-creation" is new evidence. This different set of graphics includes a direct copy of the Applicant's site plan and an enlargement of that same site plan with a 25' circle drawn on top.

The Applicant/HBA argues that its appeal issues do not need to be limited to the issues raised before the HO. Further, they assert that if the PC finds new evidence, it should strike the evidence and not the entire issue being raised.

On October 11, 2012:
The SEN responded that the request to strike is also based on the Applicant's failure to raise the alleged deficiencies of Mr. Matthew's map before the HO.

Staff Recommendation:

With respect to EC 9.7655(2), "No new evidence pertaining to appeal issues shall be accepted," staff recommends that the PC reject the two graphics imbedded in the Applicant/HBA's appeal statement at page 8. Staff finds that these "re-creations" are more than admissible manipulations of existing record evidence. Staff believes that the set of graphics provided in the Applicant/HBA's October 9 letter are acceptable and recommend that those graphics be consulted instead of the ones at page 8 of the Applicant/HBA's appeal statement, and that references to the stricken graphics also be stricken/ignored. The text in the appeal statement, without the stricken references, remains relevant to the October 9 graphics and, as discussed in the following paragraph, may be retained. That critique of Mr. Matthews' map can be argued based on the record evidence.

With regard to EC 9.7655(3), "limiting an appeal to issues raised during the review of the original application," staff believes that the PC should reject SEN's contention that the Applicant/HBA raises a new issue in its first assignment of error (sections 3 and 4). Staff recommends that the PC consider the issues raised in the Applicant/HBA appeal. Staff disagrees with assertions made by both SEN and the Applicant/HBA. Staff does not agree with the Applicant/HBA assertion that the code allows it to raise a new issue to the PC. However, staff also disagrees with SEN's assertion that that the Applicant/HBA has actually raised a new issue. The record before the HO very clearly includes assertions about the correctness of the various slope maps in the record. In the applicant's final argument, it directs such assertions specifically at the "Matthews Map." SEN seems to believe that every argument pertaining to an appeal issue must have been made in the initial review process. Staff disagrees. For these reasons, staff recommends that the PC consider the issues raised in the Applicant/HBA appeal.

There are two parts to this request, outlined below as action items A and B.

PC Action A: Does the PC agree with staff's recommendation to reject the two graphics embedded in the Applicant/HBA's appeal statement at page 8 – because they are "re-creations" that are more than admissible manipulations of existing record evidence?

- ☐ Yes – The PC will rely on other record materials in reviewing the related Appeal Issue #1.
- ☐ No – The PC will allow the graphics as admissible manipulations of existing record evidence and *may* rely on the graphics when rendering a decision on Appeal Issue 1.

PC Action B: Does the PC agree with staff's recommendation to deny SEN's contention that the Applicant/HBA raises a new issue in its first assignment of error – because the record before the HO very clearly includes assertions about the correctness of the various slope maps in the record?

- ☐ Yes – The PC will consider these issues raised in the Applicant/HBA appeal.
- ☐ No – The PC will not consider the Applicant's arguments about the correctness of Mr. Matthews' slope map.

3. Applicant/HBA Request that the PC Take Official Notice of Documents

Request: This issue was addressed in the November 14, 2012 AIS and is restated here.

Relevant Code Text:
EC 9.7095 Quasi-Judicial Hearings – Official Notice and Record of Proceedings provides that the Planning Commission may take official notice of any public record of the City. EC 9.7655 Filing Appeal of Hearings Official or Historic Review Board Initial Decision provides that "No new evidence *pertaining to appeal issues* shall be accepted."(italic added for emphasis).

Applicant/HBA:
In their Appeal Statement, the Applicant/HBA has asked the PC to take official notice of several HO decision documents on other PUD applications to support their argument that the HO decision on the modification to lot standards is unprecedented in Eugene.

Staff Recommendation:

Staff recommends that the PC deny the request for official notice. The documents are being offered by the applicant as substantive evidence to aid in its appeal issues #3 & #4. This is arguably inconsistent with EC 9.7655 which provides that "No new

evidence *pertaining to appeal issues* shall be accepted."

PC Action: Does the PC agree with staff's recommendation to reject these documents?

- ☐ Yes –In response to staff's November 14 recommendation against taking official notice, the Applicant has acknowledged that "the PC has much material…and that not taking official notice…will lessen the work before you. The applicant is OK with this [staff's] recommendation." (See November 14, 2012 Hearing Exhibit C, letter from Rick Satre). The Applicant does not rely on these documents to support their related appeal issues (#3 and #4), so they are unnecessary.

- ☐ No – The PC wishes to take official notice of the documents.

4. Request to Consider SEN Testimony that the HO Excluded from the Record

Request: This issue was addressed in the November 14, 2012 AIS and is restated here.

SEN:
In their Appeal Statement, the SEN claims that the HO erred when he refused to consider the SEN rebuttal testimony dated September 11, 2012.

Staff Recommendation:

The SEN testimony could not be considered because it was submitted after the close of the record. Staff tried to facilitate a timeline extension to consider this new evidence, but the Applicant would not grant one. The Applicant simply stating that the HO could consider the evidence without providing more time to extend the record was insufficient. While the HO would likely have considered an extension of the record with a timeline extension from the Applicant, none was provided, so the HO had no recourse but to formally issue an Order denying the SEN request. Staff recommends the PC reject the SEN request.

PC Action: Does the PC agree with staff's recommendation to reject testimony submitted after the close of the HO record?

- ☐ Yes.

- ☐ No – The PC finds that the HO should have accepted the testimony because _____.

5. Request to Reject the SEN Appeal

Request: At the November 14, 2012 hearing, Bill Kloos argued that the SEN was not approved by the SEN Board of Directors and that the SEN Charter does not allow appeals (see Hearing Exhibit A). Dan Snyder argued that the neighbors had a quorum of board members present at the hearing and took an official vote ratifying the filing of the appeal; he also asserted that the neighbor's charter clearly authorizes the filing of

appeals in local land use planning actions.

Staff Recommendation:

Staff believes that whether or not SEN complied with its own charter is not an issue for the PC to consider. It does not relate to an approval criterion and was not an issue before the HO. Therefore, it is beyond the scope of the PC's review. City staff accepted the SEN appeal with the 50% fee for recognized neighborhood associations; to assert its argument, the Applicant and HBA could challenge that staff action, not the HO decision.

PC Action: Does the PC agree with staff's recommendation to continue to recognize SEN as an appellant?

- ☐ Yes – For the reasons above, the PC will continue to consider SEN's appeal.
- ☐ No – The PC dismisses the SEN appeal and will consider only the issues raised by the Applicant/HBA.

6. Request to Reject the SEN "Google Map" Transparency (Hearing Exhibit E)

Request: At the November 14, 2012 hearing, Mr. Snyder distributed documents to the Planning Commission, which he described as being a transparency of a "Google Map" overlaying an excerpt of the Goal 5 Scenic Areas map. Staff notes that this information is being presented by the SEN to support its Appeal Issue #6 – to show that the subject property is not on the Goal 5 Scenic Area map and, as such, the PUD is not exempt from the geotechnical analysis standards. Refer to Appeal Issue #6 for more information. Mr. Kloos requested that the PC reject this as "new evidence." (See Hearing Exhibit E.)

Staff Recommendation:

Staff recommends rejection of the "Google Map" transparency – because it is new evidence that is not in the record and was not considered by the HO in rendering his decision.

PC Action: Does the PC agree with staff's recommendation to reject the "Google Map" because it is new evidence.

- ☐ Yes.
- ☐ No – The PC will take official notice of this evidence and *may* rely on it while reviewing Appeal Issue #6.

7. Request to Reject the SEN "Demonstrative Exhibit"

Request: At the November 14, 2012 hearing, Mr. Snyder posted the Applicant's full-size contour map and then called Mr. Matthews, with ruler and marker in hand, to measure and mark on that map. Mr. Kloos requests that the PC not accept this map

because the markings on the map are new evidence.

Staff Recommendation:

It is unclear to staff how this information would assist the PC in its decision-making process, as there was no associated testimony presented to explain what Mr. Matthews was trying to illustrate. It should also be noted that Mr. Snyder did not submit the resulting map into the record. See staff's analysis of Appeal Issue #1 for more information.

PC Action: Does the PC agree with staff's recommendation to reject the map prepared by Mr. Matthews at the hearing?

- ☐ Yes – The PC finds that the markings on the map are new evidence.
- ☐ No – The PC finds that the markings on the map are not new evidence.

Staff Note: In this case, because the actual map was not provided to staff for placement into the record, the PC would need to rely on the video recording of the hearing to review the map.

8. Request to Reject Appellants' Testimony Received After November 14, 2012

Request: Staff received an email with an attached letter from Dan Snyder on November 16, 2012, and emails with attached letters from Bill Kloos on November 15 and November 19, 2012.

Staff Recommendation:

Staff notes that the time for submitting material into the record closed on November 14, 2012. Therefore, staff has not included these materials in the record. To be clear as to the record's contents, however, staff requests that the PC explicitly reject these materials.

PC Action: Does the PC agree with staff to reject these post-record testimonies?

- ☐ Yes.
- ☐ No.

ATTACHMENT 2: APPEAL ISSUES AND STAFF RESPONSE

Eleven appeal issues were raised by the appellants and evaluated by staff (see November 14, 2012 PC Agenda Packet -- Attachment 2). Additional information on the appeal issues provided at the public hearing or in response is specifically noted below. Staff's recommendation on each appeal issue is also provided below.

Applicant/HBA Appeal Issue #1: 20% Slope Grading Prohibition

"The HO erred in applying the 20% slope grading standard at all, and in finding that the application did not comply with the standard."

1. ***"The HO erred in concluding the 20% slope grading standard must be applied.***
   - (a) ***The method for measuring 20% slope is too ambiguous for the standard to be applied at all. The argument over how to measure slope shows the standard can't be applied in a clear and objective way. Hence, it may not be applied at all. ORS 197.307(4); OAR 660-008-0015; Rudell v. City of Bandon, 62 Or LUBA 279 (LUBA No. 2010-037, November 29, 2010).***

Staff Recommendation:

With regard to the Applicant/HBA's sub-assignment I(1)(a), the Applicant argued to the Hearings Official that the above criterion violates state laws that require needed housing approval criteria to be clear and objective. In other words, the Applicant argues that the City is prohibited from applying the 20% slope criterion to the subject application for needed housing and from applying it to any future applications for needed housing. The applicant asserts that, because the criterion itself does not specify the method for determining slope, it is not clear and objective.

Staff supports the HO's decision in his rejection of the Applicant's argument, citing another LUBA case that rejected this exact argument:

> The applicant, in its written statement, hearing testimony, and post-hearing testimony, also asserts that this criterion (EC 9.8325(5)) requires the city to exercise discretion and cannot be applied as a clear and objective standard, as required for a "needed housing" development, because it does not set out the prescribed unit of measurement for determining slope. However, the Land Use Board of Appeals rejected this exact argument, about this exact criterion (EC 9.8325(5)) in *Home Builders v. City of Eugene*, 41 Or LUBA 370, 410-411 (2002). LUBA stated, "the slope of a property is an objective determinable fact, and the absence of instructions on how to determine slope does not offend [the needed housing statute]." (See page 12 of HO Decision.)

In fact, a later appeal of the very case cited by the Applicant (*Rudell v. City of Bandon,* 249 Or.App. 309, 275 P.3d 1010), the Court of Appeals used the City of Eugene's 20% slope criterion as an example of a clear and objective criterion.

PC Action 1a: Does the PC agree with staff's recommendation to reject this argument – and find no error in the HO's reliance on the direct ruling from the Land Use Board of Appeals (LUBA)?

- ☐ Yes – This is consistent with another LUBA case [*Home Builders v. City of Eugene*, 41 Or LUBA 370, 410-411 (2002)] that rejected this exact argument.

- ☐ No – The slope criterion at EC 9.8325(5) cannot be applied to the subject PUD or any other "needed housing" development.

(b) Absent code language on how to measure slope, the method to be used was not initially specified until the HO decision. This is too late. It violates the applicant's right to know at the front end of the process what it must show. ORS 227.173(1); West Main Townhomes v City of Medford, 234 Or App 343, 346, 229 P3d 607 (2010).

Staff Recommendation:

Contrary to the Applicant's statements made under sub-assignment (1)(b), the fact that the City would utilize the Applicant's own contour map (which is required by the City's application form to show 5' contours) to determine whether a portion of the site meets or exceeds 20% slope has been clearly communicated to the Applicants since before they applied for the PUD. Staff confirmed in writing that the five-foot increment shown on the site plan is the correct contour interval following the pre-application conference, well before the PUD application was submitted (see December 20, 2011 letter from Becky Taylor to Carol Schirmer.) The HO also addressed this issue:

> The applicant argues that there are four methodologies for measuring slope posited to date (Applicant's Testimony, Aug. 22, 2012). The hearings official disagrees. Despite the staff informing the applicant to measure slope using the five-foot contours on the application maps, the applicant chose to ignore that advice and measure slope over the entire site. After the hearing, the applicant then proposed to use yet a different map—the USGS topo map in the refinement plan. USGS topos have 40-foot contours [20-foot (sic)]. Just because the applicant disagrees with the instruction to use the five-foot intervals (and tried to use other methods), does not mean that the 20% rule here is not clear and objective. (See pages 12 and 13 of HO Decision.)

PC Action 1b: Does the PC agree with staff's recommendation to reject this argument – to find no error in the HO's determination that the Applicant had notice of the 20% slope criterion and knew what it must show during the application process ("at the front

end of the process"), and therefore deny the Applicant/HBA assignment of error (1)(b)?

- ☐ Yes – Before it submitted its application, the Applicant knew what it needed to show to demonstrate consistency with the slope criterion and the HO was correct to apply the slope criterion to the application.

- ☐ No – The Applicant did not know what it needed to show to demonstrate consistency with the slope criterion [PC to explain], so the HO should not have required the Applicant to comply with the slope criterion.

(c) State law prohibits using the 20% slope grading limitation that would prevent development of any part of this site that could be developed under the discretionary standards of EC 9.8320. ORS 197.307(6). State law requires development under clear and objective standards. ORS 197.307(4); OAR 660-008-0015."

Staff Recommendation:

In regards to sub-assignment (1)(c), the above findings establish that the slope criterion at EC 9.8325(5) is clear and objective. The argument that the 20% slope grading limitation prevents development of a part of the site that could be developed under the discretionary standards of EC 9.8320 is unfounded. The record shows that the applicant has been unable to obtain PUD approval to date, with a series of prior applications being denied at the local level without further appeal, for the site under the general approval criteria. The Applicant/HBA also asserts that removal of this criterion would make the original 75-lot proposal approvable. Staff disagrees; not only is the slope criterion clear and objective, the 75-lot proposal had other areas of non-compliance or was lacking in terms of evidence that would be needed to show compliance with the approval criteria, such as with stormwater drainage standards, that were not resolved to the extent the 75-lot proposal could be approved. Staff has consistently asserted that a reasonably dense development can be established on the site under both the discretionary and needed housing paths.

PC Action 1c: Does the PC agree with staff's recommendation to reject this argument – and find no error in the HO's determination that the 20% slope criterion is consistent with the State's needed housing requirements?

- ☐ Yes – The PC affirms that the 20% slope grading limitation does not violate the State's needed housing requirements. Even if the Applicant's understanding of the law is correct, the 20% grading limitation does not prevent development of a part of the site that could be developed under the discretionary standards of EC 9.8320.

- ☐ No – The slope criterion at EC 9.8325(5) cannot be applied to the subject PUD or

any other "needed housing" development.

2. The HO erred in finding that 20% slope must be determined based on 5-foot contour elevations.

(a) If the 20% slope grading limitation is to be applied at all, it must be interpreted consistent with the rules in PGE. State law provides that land in the acknowledged BLI is presumed to be developable. That state law is relevant context for interpreting the 20% limitation in the current circumstance. Because this site is in the acknowledged BLI for housing, it is presumed to be developable for housing. Measuring slope across the entire site, as done in the original application, is the correct interpretation because it allows the entire site to be developed, consistent with its status in the BLI.

Staff Recommendation:

In regards to sub-assignment (2)(a), both staff and the HO confirm that the subject property is included in the City's currently adopted Residential Land Study as buildable land. The HO based compliance on the subject application being Needed Housing because it is in the buildable lands inventory (i.e. the Residential Lands Study).

Staff agrees with the Hearings Official's point. The inclusion of a steep-sloped property on the City's buildable land inventory (BLI) does not mean that the property is buildable at the same density that a comparably-sized flat/unconstrained property. In determining whether a BLI has sufficient land to satisfy a city's 20-year need for housing, density averages and estimates are used that take into account the constrained nature of some land on the inventory. Maximum allowed densities will not be achieved, and are not assumed, for every acre on a city's inventory.

PC Action 2a: Does the PC agree with staff's recommendation to reject the argument – that the entire site must be developed, and that the slope must be measured across the entire site, to be consistent with the BLI?

- ☐ Yes – The PC affirms that the inclusion of a steep-sloped property on the City's BLI does not mean that the property is buildable at the same density that a comparably-sized flat/unconstrained property. Maximum allowed densities will not be achieved, and are not assumed, for every acre on a city's inventory.

- ☐ No –PC disagrees with staff's recommendation because _____.

(b) If the 20% slope grading limitation is to be applied at all, it must be interpreted consistent with the rules in PGE v. Bureau of Labor and Industries, 371 Or 606, 859 P2d 1143 (1993). That means an interpretation of the 20% slope standard that is consistent with the context provided by the refinement plan, the South Hills Study (SHS), which the code implements. The SHS uses the 20% slope standard, and it bases that standard on the USGS

topo map, which is reproduced in the SHS. Measuring slopes based on the 20-foot contours of the USGS map in the SHS is both consistent in the context of the refinement plan and allows the entire proposed development.

Staff Recommendation:

Under sub-assignment (2)(b), the Applicant/HBA argues that slope should be measured using 20-foot contour intervals instead of five-foot increments. The arguments of this sub-assignment contradicts the argument under sub-assignment (2)(a) (arguing that slope should be measured across the entire site). To support a 20-foot increment, they claim that the slope standard must be read in context of the South Hills Study and therefore should be measured consistent with the USGS topographic map used for that Study. Partly because the South Hills Study is an area-specific plan staff do not believe it provides context for the PUD slope criterion, which applies City-wide. A consistent measurement of 5-foot contours is utilized for PUDs in steep slope areas across the city.

Staff Note: The HO incorrectly cited the USGS topographic maps as having 40-foot contours, when they are actually at 20 feet. Moreover, he only confirmed that the standard is clear and objective and did not directly address the issue.

PC Action 2b: Does the PC agree with staff's recommendation to find that the HO erred because he did not expressly state that the USGS topography maps and the South Hills Study (SHS) are not the context for determining that the contour measurement required to demonstrate consistency with the code criterion?

- ☐ Yes – The HO should have addressed this question. The PC addresses this question by affirming that the approval criterion regarding slope has no relationship to the SHS or the USGS maps; this approval criterion applies to the entire City, not just the SHS area.

- ☐ No —PC disagrees with staff's recommendation because _____.

(c) The HO erred in considering any measurement of slope based on a five foot contour interval map, because the five-foot contour intervals reflect neither the text nor the context of the code. The five foot contour map requirement is just an information requirement made up by staff; it could change tomorrow or even during this proceeding; it is not ratified in any rule, order or code language, acknowledged or otherwise. Importing 5-foot contour maps into the standards is contrary to law. Doumani v. City of Eugene, 35 Or LUBA 388 (1999).

Additional Arguments:

At the public hearing, the Applicant asserted that "Neither staff, the HO, nor the PC can legitimately decide that the 5-foot contour (or any contour interval) can be used.

You can't just make stuff up. If it's not in the code, it can't be used." (See Hearing Exhibit C, November 14, 2012 Satre letter, page 2.) The Applicant also asserted that the "PC needs to explain why using 5-foot contours based on an application form is more correct that using 20-foot contour intervals as shown in the refinement plan." (See page 3, Hearing Exhibit C.) The Applicant also claimed that the "PC can rule in favor of using the 20-foot contour map and avoid the contest between the Staff Map and the Matthews Map."

At the hearing, Ed McMahon, HBA, also testified that "…no one has explained why the 5-foot contour map should be used rather than the 20-foot contour interval map. The 20-foot contour map preserves the BLI and, in my opinion, matches the work accomplished as part of Envision Eugene." (See Hearing Exhibit D.)

Staff Recommendation:

Under sub-assignment (2)(c), the Applicant/HBA argues that the HO erred in not addressing the argument that the City cannot use a five-foot increment for determining slope based on the application form's requirement for submittal of that information. Staff agrees with the Applicant/HBA that the HO erred in not addressing this argument; however, staff disagrees with the Applicant/HBA's argument that the City cannot use a five-foot increment for determining slope based on the application form.

Applicant/HBA relies on a case (*Doumani*) where the City refused to accept an application submitted by a person that did not own the underlying property. The City relied on the application form requirement for the owner's signature. This case is very different. There is a code criterion that clearly requires the applicant to submit slope information for determining whether any portions of the site are 20% or more. The official application form provides the level of detail the City requests for determining compliance with that criterion. This is not inconsistent with the case cited by the Applicant/HBA.

Although the SEN do not appeal this issue, their appeal statement addresses this issue, to further reinforce the accuracy of the HO ruling on the measurement of slope. The SEN statements are as follows:

> First, the Applicant's legal argument is directly contrary to binding case law. In *Home Builders Association of Lane County v. City of Eugene*, 41 Or LUBA 370 (2002), the Oregon Land Use Board of Appeals ("LUBA") expressly upheld this *exact* requirement as being "clear and objective." There, LUBA stated:
>
> > [E.C. 9.8325(5)] provide[s] that for PUD or subdivision applications involving needed housing, "[t]here shall be no proposed grading on portions of the development site that meet or exceed 20% slope." Petitioners contend that this requirement is not clear and objective,

because the code does not explain what method should be used to determine slope. The city responds, and we agree, that the slope of a property is an objectively determinable fact, and the absence of instructions on how to determine slope does not offend ORS 197.307(6).

Given this holding from LUBA, the Applicant's contention that the slope requirement is not "clear and objective" is meritless. LUBA has already determined that this provision is clear and objective, regardless of whether instruction on how to measure slope are present in the code.

Second, the Applicant itself checked a box on its Application identifying which method of measuring slope the Applicant would use. The PUD application requires an applicant to decide which contour interval it wishes to use to measure slope. The application states that the contour intervals "[m]ust be shown as below and must be based on City Bench Mark…[t]he City Bench Mark used must be noted on the plans." Here, the Applicant checked a box on its application, indicating its consent to using the following benchmark: "five-foot contour intervals for ground slopes exceeding ten percent." This was one of three available benchmarks that the Applicant could choose from. Thus, it is plainly self-contradictory for the Applicant to argue that it could use any method of measuring slope when it expressly agreed that it would measure slope based on five-foot contours.

Staff emphasizes that the applicant's own plans provided five-foot contour intervals, which was the basis of the staff analysis.

The PUD application form requires the information to be used to determine consistency with applicable criteria for any PUD throughout the City; it specifies a 5-foot contour interval. The Applicant and HBA are suggesting that this particular application should be treated differently by using the 20-foot contour map of the SHS or the USGS maps. The PUD application form lists information needed from the Applicant to ensure that staff has sufficient information to evaluate the application under the relevant approval criteria. This ensures consistency – and the clear and objective application of this standard. The SHS is a policy document, whereas this code language is specifically clear and objective, as are the application form requirements. This ensures that there is no subjectivity in the data source – and that the data is correlated to the site in question. The application form requires the Applicant to map the contours of the site, rather than relying on another published form of contours and superimposing those on the site; the former is site-specific, whereas the latter has greater subjectivity and room for error.

PC Action 2c: Does the PC agree with staff and find that the HO erred in not explicitly stating that the correct contour measurement is the five feet interval that was required by the PUD application form and provided by the Applicant?

- ☐ Yes – The PC will consider the Applicant's five-foot contour maps when considering this and other appeal issues regarding slope.

- ☐ No – The PC disagrees with staff's recommendation because _____.

3. The HO erred in choosing the Matthews Map, even though he concluded it is not clear to him that the Matthews Map resulted in more accurate information. The evidence in the record shows the Matthews Map has methodological flaws that are not in the Staff Map. The Commission should opt for the Staff Map.

4. The HO erred in faulting the applicant for failing to design around the Matthews Map. The record shows that the Matthews Map placed in the record was documented late in the process (three weeks after the hearing), has methodological shortcomings discussed above, and is unsuitable for site planning by the applicant due to its size and lack of scale.

(a) Contrary to the HO's finding, the applicant did respond to the Matthews Map, to the extent possible based on the sketchy documentation associated with the Matthews Map.

(b) There is no basis in law or in common sense for denying this application for failure to conform the Site Plan to the Matthews Map of slopes, rather than the Staff Map of slopes.

Additional Arguments:

At the public hearing, both appellants argued the accuracy or inaccuracy of Mr. Matthew's map: the Applicant asserted that the "Matthews Map" is flawed and that the methodology was provided too late in the process for the Applicant to further consider the evidence; SEN attempted to show the accuracy of the "Matthews Map" and argued that the Applicant had plenty of time to provide a response to the HO.

Staff Recommendation:

Staff notes that the outcome of Preliminary Issues 2a, 2b, and 7 affect this appeal issue – See Attachment 1.

To decide on these issues, the PC should determine whether the Hearings Official erred in determining that Kevin Matthews' slope map is more accurate as a means of showing slope over 5' intervals on the site than the Applicant's alternate (47-lot) plan. All parties, including staff, believe that the map created by staff is the least accurate for showing slope over 5' intervals. The supplemental staff report (July 2012) conceded to several staff errors and concurred with the applicant's map. In creating its 47-lot plan, the applicant did more than superimpose the staff analysis of 5'contour/20% slopes; the accuracy was refined in the Applicant's alternate (47-lot) plan. Some of the staff errors had to do with misreading an easement line as a contour line.

At the public hearing, Mr. Matthews entered into the record a reduced, letter-sized plan (the Applicant/HBA's statement above about Mr. Matthews submitting his map "three weeks before the hearing" is inaccurate). Mr. Matthews' map highlighted the 20% slopes on the site that were consistent with the Applicant's alternate (47-lot) plan in yellow and then identified a few, small areas of red to indicate additional areas of 20% slope.

The accuracy of Mr. Matthews' map was questioned by the HO:

> It is not clear to the hearings official whether the software resulted in more accurate information, but the hearings official believes that the circular shape of the measuring tool did provide more accurate information. (See page 13 of the HO Decision.)

Mr. Matthews' explained his methodology in an August 20, 2012 letter to the Tebbutt Law Office, which the Applicant/HBA critiques as follows:

> Mr. Matthews started with a .PDF map, which he imported into Photoshop, then measured the distance between the contour lines in Photoshop, using a circular brush tip for the diameter of a 25-foot circle. The image resolution is stated as 3302 x 2282 pixels. Pixels are squares placed on a grid pattern to represent shapes (straight and curved lines, circles, etc.). This creates room for error or fudging in the measurement. The pixelated lines on the map have depth. That is, each contour line becomes multiple pixels wide…

The Applicant/HBA explain the above critique by comparing portions of the two record documents: the Applicant's AutoCAD map and the Matthews Photoshop map. (As discussed at Preliminary Issue #2 in Attachment 1, the graphics referenced here are those provided in the Applicant/HBA's October 9th letter, which are acceptable to staff, rather than those embedded in the Applicant/HBA Appeal Statement at page 8.) The evidence shows that the area of 20% slope submitted by Kevin Matthews cannot be confirmed on the same area of the site plan produced by the Applicant, even when applying the circular measuring tool. The Applicant/HBA shows that the five-foot contours in this area are greater than 25 feet apart – that the circle fits between the contour lines. Hence, the circle measurement tool did not provide different results that the square measurement tool initially used by staff; the Matthews' Photoshop map produced different results than the Applicant's AutoCAD map.

The Applicant/HBA note that the discrepancies between the two maps are likely a result of computer monitor resolution, affecting pixel size, and by moving drawings into and out of software, which generates inaccuracies in line weight. Staff finds this to be the more likely explanation than any intentional "fudging" by Mr. Matthews,

as suggested by the Applicant/HBA. The Applicant asserts that the "Matthews Map" cannot be reproduced to-scale to be used as a reliable source for dictating or restricting areas of development.

Staff believes the most convincing evidence of map accuracy is the Applicant's alternate (47-lot) plan that was provided to-scale and stamped and signed by the Applicant's design professional, Carol Schirmer.

Staff believes that the determination of the appropriate (most accurate) map does not necessarily determine whether the PUD is approved or denied. Regardless of the map selected, the PUD could be approved with the condition of approval that is already in place regarding "areas shaded 20% or more shall not be graded." Because the Matthews Map identifies relatively small areas of additional 20% slopes and if the Planning Commission finds that the Matthews Map is most accurate, the PC could require the applicant to add more shading to the final PUD site plans. It is not uncommon for a final PUD plan to result in slight reconfigurations of the roadway alignments and lot layout, in response to conditions of approval.

Staff believes that the PC can condition approval to restrict grading on areas of 20 percent slopes consistent with the relevant approval criterion at EC 9.8325(5). Even the HO noted that the areas identified by Mr. Matthews were "relatively minor." Staff notes that per state law, when a reasonable condition can be crafted, it should be. (See recommended condition of approval #3 at the end of this report.)

PC Action A: Does the PC agree with staff and find that the HO erred in determining that the Matthews' slope map is more accurate as a means of showing slope over 5' intervals on the site than the Applicant's 47-lot plan map?

☐ Yes –

☐ No – The Planning Commission does not agree with staff because _____.

PC Action B: Does the PC agree with staff and find that the HO erred in not crafting conditions of approval in response to evidence produced by Mr. Matthews?

☐ Yes –

☐ No – The Planning Commission does not agree with staff because _____.

Applicant/HBA Appeal Issue #2: Improvements in West Amazon Drive Right-of-Way

"The HO erred in failing to find that West Amazon Blvd. improvements can be constructed within the 60-foot right-of-way in compliance with the 20% slope grading limitation of EC 9.8325(5)."

Additional Arguments:

In its November 14, 2012 testimony, the Applicant agreed with staff's recommendation to resolve this appeal issue (see pages 48-49 of the November 14, 2012 PC Agenda Packet --Attachment 2).

Staff Recommendation:

This assignment of error cannot be specifically found in the HO decision; it is not clear how this "failure to find" would have changed the HO decision. With regard to West Amazon Drive, the HO correctly begins his evaluation of EC 9.8325(5) as follows:

> To start, the existing West Amazon Drive is not included in the "development site," which is a term defined in EC 9.0500 as follows: "A tract of land under common ownership or control, either undivided or consisting of two or more contiguous lots of record. For the purpose of land use applications, development site shall also include property under common ownership or control that is bisected by a street or alley." As such, the existing West Amazon Drive right-of-way is not subject to this approval criterion. (See page 12 of HO Decision.)

There is nothing in the HO's evaluation of EC 9.8325(5) that critiques West Amazon Drive. The appellant's issue appears to pertain more directly to the approval criterion at EC 9.8325(6) "The PUD provides safe and adequate transportation systems…" where the HO made the following findings of noncompliance:

> Based on the previous findings at EC 9.8325(5), regarding the approval criterion that "there shall be no proposed grading on portions of the development site that meet or exceed 20 percent slope," none of the proposed streets, except Canyon Drive, can be constructed in the locations proposed by the applicant in compliance with EC 9.8325(5). (See page 15 of the HO Decision.)

Resolution of Appeal Issue #1 may partially address this issue. The HO assumed that some of the streets needed to be realigned to avoid the additional areas of 20% slope mapped by Kevin Matthews. With regard to West Amazon Drive, the HO states:

> The applicant's plans show a proposed 50 feet of right-of-way within the existing 60 feet of right-of-way, although there is no information about the intent for the balance of the additional 10 feet of right-of-way. Staff noted in the staff report that this area would likely be needed to accommodate the construction of 2:1 side slopes for the transition of cuts and fills with existing grades, as discussed in greater detail below. (See pages 15 and 16 of HO Decision.)

It does not appear that the HO was concerned about the construction of West Amazon Drive occurring outside of the existing right-of-way, and therefore being subject to the 20% slope grading prohibition; conversely, the HO endorsed the conditions of approval recommended by staff regarding the establishment of slope easements and the delineation of 20% sloped areas that shall not be graded, as follows:

- The final PUD plans shall note the following restrictions regarding areas with slopes that meet or exceed 20 percent: "Areas identified as having 20 percent slopes shall not be graded, pursuant to EC 9.8325(5). Construction site management shall include protective fencing of these areas. Utilities in these locations will need to be installed without grading, such as with boring or other construction technique."

- The final PUD site plans shall show cut and fill slopes associated with the street improvements and shall delineate public slope easements for those slopes that fall outside of the right-of-way. Slope easements will be more precisely determined during the PEPI permit process and on the plat.

The appellant does not appear to be contesting these conditions by offering the following, additional condition of approval:

- Final plans for West Amazon Blvd. will show retaining walls where necessary to ensure that road improvements will not require grading of slopes 20% or greater outside the right-of-way for West Amazon Blvd. [Avenue]

Staff sees no harm in adding this condition of approval to further ensure compliance, but staff does not endorse the applicant's condition as being a replacement for either of the staff conditions adopted by the HO.

If the PC agrees with staff's recommendation to add a condition of approval requiring retaining walls to ensure road improvements do not require grading of 20% slope areas outside the West Amazon Blvd. right-of-way, this appeal issue is resolved. It does not affect the outcome of the PUD.

PC Action: Does the PC agree with staff to add the Applicant's recommended condition of approval – for retaining walls where necessary?

- ☐ Yes – The PC endorses the condition of approval #5 listed at the end of this report.

☐ No – The PC does not support the condition of approval #5 listed at the end of this report because _____.

Applicant/HBA Appeal Issue #3 and SEN Appeal Issue #7a: Lot Standards

Applicant/HBA: ***"The HO erred in finding no compliance with the /WR 33% lot area limitation because he erroneously denied the requested modification to allow some undersized lots. He simply applied the wrong standard in denying the requested modification."***

SEN: ***"…the Hearings Official determined that neither Application complied with EC 9.8325(7)(a), which prohibits a new lot if more than 33% of that lot would occupy a /WR conservation setback zone. The Official expressly found that 'the application does not comply with this criterion.' Decision at 21. Despite this finding, the Official did not base his denial on this ground."***

Additional Arguments:

The Applicant asserted in its November 14, 2012 testimony (see Hearing Exhibit C, page 4) that the PC can find that the application satisfies the relevant criterion at EC 9.8325(7) with either the Applicant's 47-lot plan or the 20-foot contour map.

Staff Recommendation:

The standard at EC 9.8325(7) requires: "The PUD complies with all of the following (an approved adjustment to a standard pursuant to the provisions beginning at EC 9.8015 of this land use code constitutes compliance with the standard):

(a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone. Within the /WR Water Resources Conservation Overlay Zone or /WQ Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
   1. The combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback; or
   2. The /WQ Management Area.

The HO found noncompliance with the lot standards approval criterion because he assumed that the lots needed to be reconfigured to respond to the "Matthews Map." Although the HO did not repeat this as a basis for his denial, the text of his decision was clear. The additional areas of 20% slope identified by Mr. Matthews are six small areas that primarily affect street alignments (see color map with red highlights on the Applicant's plan sheet L2, provided in Hearing Exhibit E), rather than lot areas; further, staff recommends approval of the applicant's proposed modification to the lot standards because the 47-lot plan that results from the

proposed conditions provides ample open spaces to offset any reduced lot areas, consistent with the purpose of the PUD provisions for clustering development.

PC Action: Does the PC agree with staff to overturn the HO basis for denial under the approval criterion EC 9.8325(7)(a) and, instead, approve a modification to the lot standards and find compliance with the following condition of approval, as recommended in the July 2012 staff report: "The final PUD plans shall provide a table identifying the lots that do not meet minimum lot standards, up to a maximum of 50% of the lots shown on final plans."?

- ☐ Yes – The PC approves a modification of lot standards and endorses the condition of approval #11 listed at the end of this report.

- ☐ No – The PC either determines (a) that the condition should be modified to require that the final PUD plans shall be revised to show all lots in compliance with EC 9.8325(7); or (b) the PC determines that there is no reasonable condition that can be established.

Applicant/HBA Appeal Issue #4 and SEN Appeal Issue #7b: Solar Lot Standards

Applicant/HBA: ***"The HO erred in finding no compliance with the solar lot standards."***

SEN: ***"Similarly, the Hearings Official found that the Applications did not comply with EC 9.8325(10), which requires compliance with Solar Lot Standards found at EC 9.2790. Nonetheless, the Official also failed to base his denial on this issue."***

Additional Arguments:

The Applicant asserted in its November 14, 2012 testimony (see Hearing Exhibit C, page 4) that the PC can find that the application satisfies the relevant criterion at EC 9.8325(10).

Staff Recommendation:

The standard at EC 9.8325(10) requires: "Lots proposed for development with one-family detached dwellings shall comply with EC 9.2790 Solar Lot Standards (these standards may be modified as set forth in subsection (11) below)."

The HO did not find evidence in the record to determine solar lot standard compliance, as required by EC 9.8325(10), as follows:

> The alternative site plan, sheet L9.0 explains how the PUD complies with the solar lots standards. However, the percentage of lots complying with this standard for a site plan that complies with EC 9.8325(5) has not been determined, so the hearings official cannot conclude that the PUD complies with the solar lots standards, and the applicant has not requested a modification. The

hearings official does not believe the applicant would be unable to comply with the solar lot standards; the hearings official only notes that the current record does not support a finding of compliance. (See page 31 of HO Decision.)

Page 14 of the Applicant/HBA appeal statement itemizes where this information is provided in the record. The Applicant/HBA asserts that the HO overlooked the data and that the development does comply with the above approval criterion. The June Staff Report noted that the development was eligible for an exception to these standards, as follows:

> With regards to EC 9.2790, Solar Lot Standards, 10 of the 75 lots appear to meet the solar lot standards by having a north-south dimension of 75 feet and a front lot line orientation that is within 30 degrees of the true east-west axis. This does not meet the 70 percent minimum requirement for solar lots as required at EC 9.2790(2). EC 9.2790(3)(b) allows an exception to EC 9.2790(2) if compliance with street standards requires a configuration that prevents lots from being oriented for solar access. Additionally, an exception can be granted if natural features prevent the lots from being oriented for solar access. As shown on Sheet L9.0, the north-south orientation of the street system required by street connectivity standards, combined with the Goal 5 water resources on-site, appears to preclude orientation of the remaining lots for solar access. Therefore, if the Hearings Official approves, an exception to EC 9.2790 is recommended. (See page 28 June Staff Report.)

Staff notes that resolution of Appeal Issue #1, regarding slope, will further address this issue.

Staff concludes that the HO did err by not evaluating the relevant exception provisions at EC 9.2790(3)(b) and by not crafting a condition of approval to require compliance.

PC Action: Does the PC agree with staff to overturn the HO basis for denial under the approval criterion EC 9.8325(10), based on the exception provisions at EC 9.2790(3)(b)?

- ☐ Yes – The PC approves an exception to the solar lot standards.
- ☐ No – The PC finds that the application does not meet this standard. Staff would recommend the PC consider a reasonable condition of approval be included to require compliance with the solar lot standards at EC 9.2790.

Applicant/HBA Appeal Issue #5: Standards Review for Goal 5 Crossing

"The HO erred in denying this application for failure to demonstrate, in this record, that the applicant will be able to get Standards Review approval for Goal 5 road crossings. There is no basis in the code for denying this application for failure to get Standards Review approval now, rather than in a

separate application that will be subject to public notice and an opportunity for a full public hearing."

Additional Arguments:

The Applicant asserted in its November 14, 2012 testimony (see Hearing Exhibit C, page 4) that it "makes no sense to get Standards Review before knowing exact location and scope of Standards Review needed."

Staff Recommendation:

Staff clarifies that the HO did not deny the PUD application because the Applicant did not apply for a Standards Review application concurrent with the PUD; rather, the HO found insufficient evidence in the record to confirm that the Applicant would be able to obtain Standards Review approval subsequent to the tentative PUD decision. It appears that the insufficient evidence cited by the HO relates to his assumption that the lots and streets need to be reconfigured to avoid the additional areas of 20% slope identified by the "Matthews Map." Therefore, the outcome of the PC's decision on Appeal Issue #1, may impact this issue as well.

The HO assumptions about the feasibility of Standards Review approval being associated with street and lot layout changes, as dictated by the "Matthews Map," are found under the PUD approval criterion at EC 9.8325(6)(a) "The PUD provides safe and adequate transportation systems through compliance with all of the following…EC 9.6800 through EC 9.6875 Standards for Streets…" the HO states:

> [I]mprovements within the regulated resource area require Standards Review approval, pursuant to EC 9.4930(3), which the applicant intends to obtain at a later date. The staff recommended that that applicant has demonstrated that the application can feasibly comply with Standards Review criteria with the following conditions of approval:
>
> - The final PUD plans shall note the following restrictions regarding areas with slopes that meet or exceed 20 percent: "Areas identified as having 20 percent slopes shall not be graded, pursuant to EC 9.8325(5). Construction site management shall include protective fencing of these areas. Utilities in these locations will need to be installed without grading, such as with boring or other construction technique."
>
> - The final PUD site plans shall show cut and fill slopes associated with the street improvements and shall delineate public slope easements for those slopes that fall outside of the right-of-way. Slope easements will be more precisely determined during the PEPI permit process and on the plat.

- Prior to final PUD approval, the applicant shall obtain /WR Standards Review approval for all public improvements, utility and access crossings proposed in the conservation areas.

For the purpose of this provision, if the applicant can successfully adjust the proposed streets to address EC 9.8325(5), then the hearings official concurs with the staff's recommendation; however, the applicant has not yet demonstrated that they can adjust the proposed streets to comply with EC 9.8325(5).

Since the HO qualifies the above findings as being specific to the street standards provision at EC 9.8325(6)(a), staff also points the PC to the more direct approval criterion at EC 9.8325(11), "The PUD complies with all applicable development standards explicitly addressed in the application…". The "applicable development standards" in question are those of the /WR Water Resource Overlay Zone for the three waterways that traverse the site. Each of these streams has a protected conservation area being 40 feet from the top of bank, as described at EC 9.4920 /WR Water Resources Conservation Overlay Zone – Components of /WR Conservation Area.

The Applicant's plans delineate these conservation areas. Uses within the resource area are subject to EC 9.4930 /WR Water Resources Conservation Overlay Zone – Permitted and Prohibited Uses and Exceptions. The Applicant's site plan shows utility and street improvements within portions of the protected resource areas, which requires Standards Review approval. The Applicant has not applied for Standards Review approval, but the written statement indicates that the applicant will seek Standards Review approval at a later date.

Staff's initial recommendation to the HO (see June 2012 staff report) was denial of the PUD based on insufficient information from the applicant to demonstrate the ability to comply with the /WR development standards necessary for a subsequent Standards Review approval. Staff's supplemental staff report (July 2012) recommended approval of the Applicant's alternate (47-lot) plan and supplemental materials, including the feasibility of obtaining subsequent Standards Review approval.

The HO found that, "The applicant has not submitted any evidence to demonstrate the feasibility of complying with the applicable EC 9.4980 /WR Water Resources Conservation Overlay Zone Development Standards (1) through (11), which are required for Standards Review approval." It appears that the HO made this conclusion exclusively on the prior assumption that the development needed to conform with the "Matthews Map," as the HO makes this statement immediately following the above quotation:

> Because the applicant will need to adjust the locations of roads (and thus possibly crossings within the resource area, the hearings official cannot conclude that the PUD complies with this criterion. The hearings official does not believe the applicant would be unable to show compliance with Standards Review; the hearings official only notes that the current record does not support a finding of compliance. (See page 32 HO Decision.)

Again, resolution of Appeal Issue #1 regarding slopes affects this appeal issue as well. Staff notes that the issue is not whether the Applicant has applied for Standards Review approval concurrent with the PUD, but whether there is sufficient information in the record to demonstrate the ability to obtain Standards Review approval subsequent to the tentative PUD. Public improvements are allowed in the /WR conservation area, subject to Standards Review approval under EC 9.4930(3)(b).

The relevant /WR development standards at EC 9.4980, which are necessary for Standards Review approval, include performance standards that prescribe construction techniques, site management practices, and mitigation procedures. For example, vegetation removal is limited to non-native species and impacts within the resource area must be mitigated with native vegetation enhancement. Construction practices limit the timing and type of equipment used during construction. The /WR development standards require a construction site management plan to control soil erosion and to protect the resource area during construction. Stream crossings are specified to ensure that water flow, vegetation growth, and aquatic animals and water dependent wildlife are impeded to the least extent practicable; for example, these standards would dictate the crossing design, such as a bottomless culvert or a bridge to maintain a natural channel bed.

As to the feasibility of Standards Review compliance, the applicant confirms their intent to obtain the necessary approvals prior to final PUD approval, and has identified the applicable standards and instances where proposed uses will require such approval. The record shows that the applicant's alternative plan incorporates the street design changes recommended by staff to minimize impacts. Specifically, in response to staff's recommendation (see June 2012 staff report, condition #11), the Applicant's alternate (47-lot) plan shows West Amazon Drive improvements as having 20 feet of pavement width and a curbside sidewalk on only one side of the street. These street improvements are offset from the existing right-of-way centerline near the northwest property corner, away from and thereby reducing impacts to the adjacent waterway.

Staff notes that, because the City owns the existing West Amazon Drive right-of-way, the applicant will need to obtain the City's permission to apply for Standards Review approval. The City anticipates close coordination with the applicant in advance of any final design, to ensure compliance with all applicable standards for protection of the stream corridor.

The HO did not deny the PUD application because the Applicant did not apply for a Standards Review application concurrent with the PUD; rather, the HO found insufficient evidence to confirm that the Applicant would be able to obtain Standards Review approval because he questioned whether the impacts would be significantly different if the Applicant alters the development plan to avoid the additional areas of 20% slope identified by Mr. Matthews.

As noted above, regarding Appeal Issue #1, if the PC concurs with the "Matthews Map," staff believes those areas to be minor in the context of adjusting the development plans to avoid grading of those areas. Staff thinks that the additional areas identified by Mr. Matthews do not alter the /WR impacts in a manner that compromises the ability to obtain Standards Review approval; in fact, there is only one additional area identified in the /WR area where improvement crossings have already been determined to be necessary. Restricting grading in this area identified by Mr. Matthews would mean that any underground utilities would need to be shifted slightly to the south; the street crossing would obviously be elevated over this area and wouldn't require grading in the slope-restricted area. In other words, the grading restriction results in greater compliance with the requirements of Standards Review – to minimize impacts. There appear to be no areas where roads and lots would need to be reconfigured in such a manner as to create new /WR impacts.

Staff believes it is appropriate to defer approval because Standards Review approval is subject to a Type II land use application process, which includes public notice, comment, and appeal provisions. Staff believes there is sufficient information in the record that demonstrates the Applicant's ability to obtain future Standards Review approval. The HO decision does not disagree with this conclusion. The HO was only uncertain of /WR impacts because he expected the Applicant to submit an altered plan that responded to Mr. Matthews slope map; this appears to be the only lack of evidence he cites.

PC Action: Does the PC agree with staff to overturn the HO basis for denial under the approval criterion EC 9.8325(11), with the condition that the Applicant obtains subsequent Standards Review approval required by EC 9.4930?

- ☐ Yes – The PC endorses condition of approval #6, below. Staff notes that this condition applies, regardless of how the PC rules on Appeal Issue #1; it resolves /WR impacts associated with any of the slope map scenarios.

- ☐ No – Note: Since the scope of the HO's denial on this issue is limited to the additional slope-restricted areas identified by Mr. Matthews, this option is only relevant if the PC choose to rely on the "Matthews Map." If so, the PC would then need to consider how the additional slope-restricted areas impact the /WR areas.

SEN Appeal Issue #6: Geotechnical Requirements

"The site is not exempt from the geotechnical requirements of EC 9.6710(6)."

Additional Arguments:

The Applicant asserted in its November 14, 2012 testimony (see Hearing Exhibit C, page 4) that the PC should agree with the HO that the geotechnical standards do not apply or find that the Applicant has complied with these standards with the certification provided by Dr. Schlieder. SEN presented a transparency of "Google Map" over the Scenic Area Map to the Planning Commissioners; this information cannot be considered if PC agrees with staff that this is new evidence (see Preliminary Issue #6 of Attachment 1.)

Staff Recommendation:

The approval criterion at EC 9.8325(7)(d) requires the PUD to comply with the geotechnical analysis standards at EC 9.6710. EC 9.6710(6) is specific to Needed Housing applications, which states:

> *Unless exempt under 9.6710(3)(a)-(f)*, in lieu of compliance with subsections (2), (4), and (5) of this section, applications proposing needed housing shall include a certification from an Oregon licensed Engineering Geologist or an Oregon licensed Civil Engineer with geological experience stating . . .

The referenced exemptions at EC 9.6710(3) state:

> The following activities are exempt from the requirements of this section: . . . (f) activities on land included on the city's acknowledged Goal 5 inventory.

The HO concluded that the PUD is exempt from the geotechnical requirements at EC 9.6710 because the subject property is included on the City's acknowledged Goal 5 inventory. The HO determination is based on the Goal 5 Inventory shown on Figure H-2 of the Scenic Sites Working Paper. The SEN assert that the HO finding is incorrect and should be reversed by the PC. The SEN takes issue with this exception provision being raised after the public hearing and being based on the scenic area map.

With regard to the exception provision being raised after the public hearing, the SEN assert that this was raised by the Applicant "*after* Southeast Neighbors debunked many of the conclusions contained in the Applicant's five-year old *certification*." Staff confirms that it was only during the rebuttal period that the exception provision was identified. The Applicant initially sought compliance with EC 9.6710(6)(b), without the exception provision, by providing "…certification from an Oregon licensed Engineering Geologist or an Oregon licensed Civil Engineer with geological experience stating the following:

(a) That the proposed development activity will not be impacted by existing or potential stability problems or any of the following site conditions: springs or seeps, depth of soil bedrock, variations in soil types, or a combination of these conditions; or

(b) If proposed development activity will be impacted by any of the conditions listed above the methods for safely addressing the impact of the conditions. This subsection also requires the applicant to state that the development will occur in accordance with the Engineer's statement.

The applicant submitted a geotechnical analysis prepared by GeoScience, Inc., dated February 26, 2006, and a letter from Gunnar Schlieder, Ph.D., CEG, GeoScience, Inc., dated February 15, 2012. The February 15, 2012 letter states:

I am writing this letter in support of the planned application for the Deerbrook PUD under the Needed Housing standards of the zoning code. On January 4, 2007, GeoScience submitted a report titled "Geotechnical Feasibility Study, Deerbrook PUD, West Amazon Drive" as part of an earlier application for the subdivision. The required geotechnical information and conclusions to support an approval under the Needed Housing standards are found at EC 9.6710(6)…This letter is submitted to support compliance under (6)(b). A review of the current site plan indicates that it is nearly identical to the previous plan. The 2007 GeoScience report regarding geotechnical conditions at the site concluded that some of the conditions listed under EC 9.6710(6)(a) are present in parts of the site. The plans for the subdivision were adjusted specifically to address some of these conditions and the report contains recommendations for construction practices to mitigate remaining constraints in order to safely develop the site as required under EC 9.6710(6)(b).

Staff notes that Dr. Schlieder, an Oregon certified engineering geologist, is a local expert in geology; the City has employed his services numerous times, including the development of local standards for geotechnical analysis applicability and report contact requirements. However, staff was concerned with the dates of the analysis, as stated in the June Staff Report:

Although the applicant submitted an older GeoScience report (dated February 26, 2006, instead of the January 4, 2007 report referenced above), the 2006 report is for the same property and concludes that "the proposed site is well suited for residential development." If the application is approved, to specifically address the relevant approval criterion above, the following condition of approval is recommended:

- Prior to final PUD approval, the applicant shall submit the 2007 GeoScience report regarding geotechnical conditions and recommendations for construction practices in order to safely develop the site, referenced in Dr. Schlieder's February 15, 2012 letter. The applicant shall also include a statement on PUD final plans that the development will occur in accordance with the GeoScience report recommendations.

As noted in the August 22, 2012 staff memo provided to the HO during the rebuttal period, staff was further concerned with the dated geotechnical material provided by the Applicant in the context of the more current information provided by opponents at the public hearing and during the comment period. The staff memo stated that "…we expect the applicant to respond to the public testimony and opposing evidence…" and acknowledged the following:

> At the hearing, Tom Halferty, Kevin Matthews, and Dan Snyder presented testimony regarding the geological stability of the subject property which calls the application's compliance with geotechnical standards into question. Further, written evidence from Michael James, a Registered Professional Geologist, submitted as part of Hearing Exhibit C, cites published data in support of the opposition's testimony which postdates Dr. Schlieder's report.

In addition to making this request to the Applicant for additional evidence, staff also attempted to address the public concerns while fulfilling its supporting role to the HO as follows:

> For the benefit of the concerned public, the staff analysis and recommended conditions are not only to assist you as the Hearings Official and decision-maker in the evaluation process, but to protect the public interest by providing tools to address concerns – with reliance on the available data, yet without certainty on the additional data that may or may not be provided to the Hearings Official by other parties. As noted by all parties, this is a complex project with a long history and many variables, while at the same time breaking new ground by testing our "needed housing" criteria. (See August 22, 2012 Staff Memo.)

Within the narrow confines of the geotechnical analysis approval criterion at EC 9.8325(7)(d) for Needed Housing, however, the Applicant's statement appeared to comply with the certification requirements, with the condition of approval recommended initially by staff (as cited above and stated in the June 2012 staff report). Further, upon a closer examination of EC 9.8325(7)(d), staff noted the following in its August 22, 2012 memo:

> Upon a closer examination of the testimony and available evidence in the record, and the specific language of EC 9.6710(6), the PUD may be exempt from the geotechnical standards under EC 9.6710(3)(a)-(f). EC 9.6710(6), which establishes geotechnical analysis standards for "needed housing" applications, begins with "Unless exempt under EC 9.6710(3)(a)-(f)…". As described in that subsection, activities on land included on the City's acknowledged Goal 5 inventory are exempt from the geotechnical standards at EC 9.6710.
>
> The waterways on the subject property are clearly on the Goal 5 inventory as riparian resources, but only the first 40 feet from the top of the banks has Goal 5 protection status. However, the entire property may not be exempt from the geotechnical analysis standards. The initial staff report indicated the property was included on the City's Goal 5 inventory as a Scenic Area, and the applicant asserts that is the case; however, the scale of the adopted map for Scenic Areas makes it difficult to determine whether the subject property is designated as a Scenic Area. As such, it is unclear whether all or part of the subject PUD may be exempt from the geotechnical analysis standards. See Attachment 5 for a copy of the relevant map and related ordinance.

With regard to the exception provision being based on the scenic area map, the SEN assert that "the map is ambiguous as to whether the Beverly Property is contained – either fully or partially – within the scenic inventory." As noted above, staff found the Scenic Area map to be unclear as to whether all or part of the subject property was on the inventory. The HO even acknowledged that "Figure H-2 is not particularly clear," but he also evaluated the map as follows:

> The Goal 5 Inventory includes the areas shown on Figure H-2 of the Scenic Sites Working Paper. *See* LCDC Acknowledgment of Compliance Goal 5 Addendum report at 4, para. 1 (attached as Exhibit M to applicant's May 11, 2012 PUD Narrative). Staff submitted Figure H-2 as Attachment 5 to its August 22, 2012 Memorandum.
>
> Figure H-2 is not particularly clear. It is a map of the Metro Area shown on an 11 x 17 sheet, and none of the street names are included for the streets in the vicinity of the subject property. The hearings official compared Figure H-2 to the city's current zoning map and identified the streets (or the most likely candidates). The hearings official includes an excerpt of Figure H-2 below with the streets labeled and with two short arrows labeled "1" and "2." The tip of the arrow at point 1 appears to be the location where the southern section of West Amazon connects to Fox Hollow Rd on the city's zoning map. The tip of point 2 points to the northern terminus of West Amazon. The problem is that these points are in different positions relative

to each other than they appear to be on the zoning map. If Figure H-2 accurately depicts West Amazon in the vicinity of point 2, then the subject property would seem to be included in the Goal 5 resource mapped area. If, however, it is was erroneously drawn too far south relative to point 1, then the subject property would be outside or possibly split by the goal 5 resource mapped area.

The applicant argues that the subject property is within the goal 5 mapped resource area and Southeast Neighbors states that Figure H-2 is too vague to rely on. The Staff Report initially stated that the property was within the Goal 5 resource mapped area, but Staff's Aug. 22 memo stated that further review of Figure H-2 does not clearly show the subject property within the Goal 5 mapped resource area. The hearings official concludes that the subject property is included on the city's acknowledged Goal 5 inventory for Scenic Areas for two reasons. First, Figure H-2 shows the northern terminus of West Amazon within the mapped resource area. In 1978, the date of the working paper and Figure H-2, the technology to precisely map roads and other features did not exist in the way we expect precision in 2012. The northern terminus of West Amazon is shown within the Goal 5 mapped resource area and the subject property is south and west of this terminus point; thus Figure H-2 intends to show the subject property within the mapped resource area. Second, the subject property contains features corresponding to two of the standards that the city developed to identify specific scenic sites in the Scenic Sites Working Paper at G-3–G-4 (attached as Exhibit 5 to Staff Memo (Aug. 22, 2012). The subject property is a natural site of visual prominence (standard 1), and it contains moving water (standard 3). For these reasons, the hearings official concludes the subject property is within the Goal 5 mapped resource area. (See pages 26 and 27 of HO Decision.)

As noted above, the HO examines the map in the context of another map (i.e. the zoning map) and identifies the "problem points" on a diagram within his decision document (see page 27 of HO decision). Staff does not find error in the HO findings or conclusion, but does find merit in the SEN argument that the 1978 map does not accurately depict the location of streets. As the HO acknowledged, "the technology to precisely map roads and other features did not exist in the way we expect precision in 2012." Staff does not conclude that the map is too ambiguous to be applied; as the HO found, the associated Scenic Sites Working Paper identifies the specific features that constitute the Scenic Area.

Although the geotechnical issues presented the greatest staff concern, from a practical standpoint about the long-term success of the development, and from a basic health and safety standpoint about the effects on surrounding properties, staff is less concerned about the PC's determination of whether the subject property is on

the Goal 5 Scenic Area inventory or whether the PUD is exempt from the geotechnical analysis standards at EC 9.8325(7)(d). As the HO correctly noted, this conclusion would not absolve the development from providing stability measures in subsequent construction permits. The HO concludes:

> Thus, despite a disagreement between the applicant's registered engineering geologist and Southeast Neighbors' registered professional geologist about the stability of the subject property, the proposal is exempt from the geotechnical analysis at this land use application phase. The hearings official, however, notes that this exception does not exempt the applicant from building permit or other post-land use approval requirements relating to soil and geological stability. (See pages 27 and 28 HO Decision.)

With regard to "disagreements between the applicant's registered engineering geologist and Southeast Neighbors' registered professional geologist," the Applicant's evidence is based on on-site investigations, whereas the SEN evidence is based on computerized maps. Staff notes that even if the project was not exempt from these standards, during the rebuttal period, the Applicant submitted supplemental information from Dr. Schlieder that addresses these standards.

In a letter dated August 22, 2012, Dr. Schlieder responded to the testimony submitted by the SEN, acknowledging that "…it is appropriate and prudent to respond to the concerns raised…" With regard to the LIDAR (Light Detection and Ranging) images referenced by opponents, Dr. Schlieder states:

> GeoScience reviewed these images as soon as they became available, approximately two years ago. However, there are no indications on these shaded relief maps that the site is underlain by large-scale slope movement…

Dr. Schlieder explains how it is "…problematic to show landslides on geological maps based on remote sensing evidence without careful field verification and subsurface exploration." Dr. Schlieder's analysis is based on 40 test pits, in addition to other evidence, which "refute the claims of the presence of large-scale slope movement deposit beneath the site." Dr. Schlieder concludes:

> However, the fact that slope movements are present in the vicinity of the site does not automatically indicate that the site itself is underlain with such features. GeoScience's test pits prove that it is not. The geological/geotechnical information developed by GeoScience does indicate the presence of variable thickness of expansive soil over portions of the site. The 2/4/2007 report addresses this issue both for infrastructure and foundations, with recommendations tailored to the specific conditions found in nine different design areas which were distinguished on the site.

The presence of expansive soil on the site does not represent a threat to public health and safety, as the shrink-swell related movement is very slow and limited in magnitude. If appropriate construction practices are employed, which have been listed for each design area in the February 4, 2007 GeoScience report, there is no risk to public welfare from the presence of these soils on the PUD.

If the PC finds that the subject property is not exempt from the geotechnical standards (based on the Goal 5 inventory mapping), then the PC will need to determine whether the applicant has met the requirements of the geotechnical analysis standards.

Staff agrees with the Applicant that the PC only needs to confirm the subject property's eligibility for an exemption to these standards by affirming its Goal 5 inventory status; or confirm that the Applicant has fulfilled the geotechnical analysis standards with the data provided by Dr. Schlieder. Staff would emphasize that the geotechnical analysis required of Needed Housing applications is limited in scope. Based on the data provided in Dr. Schlider's January 4, 2007 letter, staff affirms that Dr. Schlieder's data meets the requirements; hence, staff does not believe the PC needs to determine whether the subject property is on the Scenic Areas map. Even if the property is eligible for an exception, the Applicant can choose to not take advantage of the exception and fulfill the standards.

PC Action: Does the PC agree with staff that the Applicant has satisfied the geotechnical analysis requirements by the data provided by Dr. Schlider and that, as such, it does not matter whether the property is eligible for an exception to these standards?

- ☐ Yes – No further analysis of the Scenic Areas map is required and the following condition of approval should be imposed: "The final PUD plans shall state that the development will occur in accordance with the GeoScience report recommendations." (See recommended condition of approval #18 below.)

- ☐ No – The PC determines that the data provided by Dr. Schlider does not meet the requirements of EC 9.6710(6). Then, the PC would need to examine the Scenic Area map and produce findings sufficient to contradict the HO's findings that the property is included on the Scenic Area map.

SEN Appeal Issue #7: Lot Standards (See Applicant/HBA Appeal Issues #3 and #4 above)

This issue has two parts: a) lot dimension standards; and b) solar lot standards, both of which are addressed above, under Appeal Issue #3 and #4.

SEN Appeal Issue #8: Compliance with EC 9.7007 Neighborhood / Applicant Meeting

SEN asserts that there are two plans being evaluated as part of the subject request: the initial 75-lot plan; and the 47 lot alternate plan, addressing the staff recommendations. The SEN claims

procedural error because only the 75-lot plan was presented at the pre-application Neighborhood/Applicant Meeting, required by EC 9.7007.

Additional Arguments:

The Applicant asserted in its November 14, 2012 testimony (see Hearing Exhibit C, page 4) that the Neighborhood Meeting is a requirement relating to completeness and is not something the PC can review.

Staff Recommendation:

The Applicant held two neighborhood meetings with SEN (December 8, 2011 and January 10, 2012). At these meetings, the Applicant presented its 75-lot plan. Then, the Applicant submitted the 75-lot plan with its application. The Applicant later submitted a 47-lot plan that the HO Official regarded "as simply illustrative of how the applicant could comply with the conditions of approval recommended in the original (June 2012) staff report" and not as a revised application. At page 7 of its appeal statement (See Attachment 3), SEN argues that the "[c]ode required the Applicant to share its actual proposed site plan with Southeast Neighbors prior to submitting an application. EC 9.7007(8). The Applicant has never completed this requirement for its 47-lot Application. Its failure to do so requires the PC to deny the 47-lot Application in total."

Staff believes the issue is beyond the scope of the PC's review. Under the Eugene Code, the neighborhood meeting is an application requirement that is considered by the City as part of completeness review under EC 9.7015. The code provides that a PUD application will not be deemed complete for City consideration unless it includes specific documentation of the neighborhood meeting. EC 9.7007(11); EC 9.7010. The code also provides that "[i]f the site plan submitted with the application does not substantially conform to the site plan provided at the [neighborhood] meeting, the applicant shall be required to hold a new neighborhood/applicant meeting." EC 9.7007(12). In this case, when the application was submitted, staff determined that the Applicant submitted the required documentation and that the site plan submitted with the application substantially conformed to the on provided at the neighborhood meeting. The application was deemed complete, and the HO's evaluation process began.

Even if staff had been incorrect in their determinations, once an application is deemed complete, there is no basis for the HO or the PC to reconsider compliance with the neighborhood meeting requirement. The HO noted, under the introductory heading "Application referrals and Public Notice" on page 7 of his decision, that the application materials confirm compliance with EC 9.7007. The HO does not revisit the requirement under any criteria. EC does not include a PUD approval criterion under which the HO or the PC may consider compliance with neighborhood meeting requirement.

Further, the HO's decision actually evaluated the 75-lot plan – the one presented at the neighborhood meetings – as the application (see page 2 of HO Decision). The HO's denial is based on shortcomings in the 75-lot proposal. As noted above, the HO regarded the 47-lot plan as additional evidence, but not as a revised application.

Staff recommends that the PC deny this assignment of error. Staff believes the issue is beyond the scope of the PC's review.

PC Action: Does the PC agree with staff to deny this assignment of error?

☐ Yes – Nothing further is required.

☐ No – PC disagrees with staff's recommendation because _____.

SEN Appeal Issue #9: Stormwater

"The Hearings Official ruled that the Applicant complied with EC 9.8325(13) because 'the condition of approval required to comply with EC 9.8325(7)(j) that addresses flow-control ensures that the application complies with this approval criteria." Decision at 34. This determination was in error, as the Applicant must make an independent showing that it can comply with this criterion."

Additional Arguments:

The Applicant asserted in its November 14, 2012 testimony (see Hearing Exhibit C, page 4) that "the new stormwater standards in the code and the Manual constitutes compliance with the older language of (13)." SEN argued that the approval criterion and EC 9.8325(13) cannot be met by complying with the stormwater development standards at EC 9.8325(7)(j) because there are "different impacts of the different requirements," although those differences were not clearly explained.

Staff Recommendation:

The SEN assert that the applicant never directly addressed the approval criterion at EC 9.8325(13), which states "Stormwater runoff from the PUD will not damage natural drainage courses either on-site or downstream by eroding or scouring the natural drainage courses or by causing turbidity, or the transport of sediment due to increased peak flows or velocity." The HO decision confirms that the applicant did respond directly to the approval criterion at EC 9.8325(13) and further defines the extent to which this criterion applies to the development, as being specific to "stormwater runoff from the PUD," rather than street and utility crossings of the onsite natural drainage courses. The HO states:

> The applicant responds to this approval criterion as follows: "Stormwater is not being added to any natural drainage course onsite. The plans show that stormwater from this site, after treatment in onsite facilities, will enter the city's piped system at the north end of the site. These facilities eventually discharge to the Amazon Canal, an engineered drainageway and part of the

city's stormwater system. In terms of impacts on the waterway offsite, the owners understand this standard to mean that no damage will result if onsite stormwater detention facilities are constructed to city standards to accommodate the 10-year design storm. The stormwater facilities are designed to meet this city standard; hence a positive finding can be made."

The above approval criterion is specific to "stormwater runoff from the PUD," rather than street and utility crossings of the onsite natural drainage courses. As addressed previously at EC 9.8325(7)(j), regarding the stormwater development standards at EC 9.6791 through EC 9.6797, the western portion of the development site does not direct stormwater runoff from the PUD to an on-site waterway, although the proposed piped system does outfall to an open drainage system farther to the north. The condition of approval required to comply with EC 9.8325(7)(j) that addresses flow-control ensures that the application complies this approval criterion. (See pages 33 and 34 of HO Decision.)

Staff notes that, specific to the western portion of the site (the 47-lot plan), the stormwater development standards at EC 9.8325(7)(j) do not require compliance with the flow control standards at 9.6793 Stormwater Flow Control (Headwaters) because the outfall to the open system occurs at an elevation less than 500 feet. Development of the eastern portion of the site (for 75 lots) would be required to meet EC 9.6793, for which the Applicant proposed a series of detention ponds and open drainage conveyance, but without sufficient evidence for staff support. Holding the western portion of the development (for 47 lots) to the flow-control standards of EC 9.6793, even though they are not required by those stormwater development standards, to ensure compliance with the approval criterion at EC 9.8325(13) means that each lot will be required to detain post-development peak flows to pre-development levels. In this way, the HO is precisely addressing the different impacts of the different requirements between EC 9.8325(7)(j) and EC 9.8325(13).

The pollution-reduction medium on each lot, required for compliance with EC 9.6792 Stormwater Pollution Reduction, such as a flow-through planter at the roof downspout, will be required to have a larger sizing factor to provide detention and reduce the overflow during peak flow events. The flow control standards were specifically designed to address erosion of Headwater Streams. As a public improvement, the outfall will be required to meet public design standards, which requires stability and velocity measures at outfalls in every case.

The HO imposed the Flow-Control (Headwaters) standards of EC 9.6793 even though those standards do not apply to the PUD (with the conditions imposed by staff that eliminates development from the east half of the site and reduces the number of lots from 75 to 47) because the outfall occurs at an elevation below 500 feet. These standards require detention of stormwater runoff before overflowing to the public

system. The public system will be the new pipes in the street (the West Amazon Drive improvements), which means detention will need to occur on a lot-by-lot basis. These standards were specifically designed to address erosion of Headwater streams. They result in peak post-development flows being detained to pre-development levels. The approval criterion at (13) is about erosion and other issues that directly relate to increased flows. The record shows (see page 2021) that Public Works staff agrees with this conclusion; this is a public system for which they would review the engineered plans, inspect during construction, and ultimately own and maintain.

PC Action: Does the PC agree with staff that the HO did not err in finding compliance with the above approval criterion at EC 9.8325(13), with the condition that the development comply with the flow control standards at EC 9.8325(7)(j)?

- ☐ Yes – The recommended condition of approval #16, provided at the end of this report, ensures compliance consistent with the above findings.

- ☐ No – The PC finds that the flow control standards do not meet the criterion at EC 9.8325(13) based on the following evidence _____.

SEN Appeal Issue #10: Fence in 30' buffer

"The Hearings Official determined that a fence located at the outside edge of the PUD property is permissible because the code requires a buffer zone along the perimeter, but not on the perimeter. This interpretation is inconsistent with the plain meaning of the term perimeter and along."

Staff Recommendation:

The approval criterion at EC 9.8325(3) requires "The PUD provides a buffer area between the proposed development and surrounding properties by providing at least a 30 foot wide landscape area along the perimeter of the PUD according to EC 9.6210(7)." The SEN object to the allowance of a perimeter fence of the requisite 30 foot wide buffer between the proposed development and surrounding properties. The SEN disagree with the HO findings of compliance, stating that "a fence would negate that perimeter buffer and cause that property to become included in the PUD property."

Staff does not understand the SEN statement that the fence causes the buffer to be part of the PUD; with or without a fence, the buffer zone is part of the PUD. Staff agrees with the HO that the above approval criterion specifies a landscaped area between the proposed PUD and surrounding properties, and along, but not "on" the perimeter. Here, where the applicant is proposing a 30-foot landscaped buffer up to the fence and the fence is on the perimeter, the landscaped buffer is "between the proposed development and surrounding properties" and is "along the perimeter." Further, EC 9.6210(7)(a) lists, "Required Materials" for the landscaped area, but does not purport to exclude all other materials. For example, EC 9.6210(7)(a) does

not use the phrase, "Allowable Materials," which would suggest a list of only those materials allowed.

If the PC thinks a perimeter fence violates EC 9.8325(3), this is a minor issue that can be conditioned. A reasonable condition of approval would be to require the final PUD plans to state that no perimeter fencing is allowed.

PC Action: Does the PC agree with staff that the HO did not err in finding compliance with the above approval criterion at EC 9.8325(3), regarding perimeter fencing?

- ☐ Yes – Nothing further is required.

- ☐ No –The PC finds that the application does not meet this standard. Staff would recommend the PC consider a reasonable condition of approval, such as the final PUD plans stating a prohibition against perimeter fencing.

SEN Appeal Issue #11: 19-Lot Rule

"Because both the 75-lot and 47-lot Applications propose to use West Amazon Drive as the only public road, the Hearings Official erred in his interpretation of the Code requirement."

Staff Recommendation:

The code requirement in question is under approval criterion EC 9.8325(6), "The PUD provides safe and adequate transportation systems through compliance with all of the following…" Subsection (c) of this criterion is known as the "19-lot rule," which requires the following:

> The street layout of the proposed PUD shall disperse motor vehicle traffic onto more than one public local street when the PUD exceeds 19 lots or when the sum of proposed PUD lots and existing lots utilizing a local street as the single means of ingress and egress exceeds 19.

HO found compliance with this standard based on the interconnectivity of West Amazon Drive, as follows:

> The street layout disperses motor vehicle traffic onto more than one public local street, as all streets proposed within the development connect with West Amazon Drive, which extends beyond the development site to the north (connecting with Martin Street) and south (connecting with Fox Hollow Road). The applicant proposes to improve West Amazon Drive to provide this traffic dispersal; the PUD proposes no phasing of the development, which means that the street improvements will be in place prior to development of the lots, rather than on an incremental basis that would bring the 19-lot rule above into question.

> The applicant additionally notes that there are two dispersion points—one to the north, which sends traffic onto the portion of the Eugene street network leading to the 30th Ave./Hilyard grid, and one to the south connecting the portion of the Eugene street network comprised of Fox Hollow/Donald/Willamette Street. The applicant states that the two street networks are sufficiently separated that if a blockage occurred on one, the other would not be affected. The hearings official concurs. (See page 20 of HO Decision.)

This standard stems from Fire Code about isolated access. The concern would be if West Amazon Drive dead-ended at the site. Instead, the Applicant proposes to improve West Amazon Drive between the existing street improvements at the north and south ends of the site. South of the site, West Amazon Drive has a paved driving surface that eventually connects with Fox Hollow Road. Fire staff has confirmed that this meets their requirements for providing two points of access.

Staff emphasizes that compliance is specific to the western portion of the site (the 47-lot plan); the eastern portion of the site (the 75-lot plan) did have more than 19 lots with isolated access onto Canyon Drive, which did not connect to West Amazon Drive. The HO notes:

> Referral comments from Fire & Emergency/Medical Services staff raised concern with Canyon Drive, but the original staff report noted that removal of this eastern portion of the development proposal would seem to resolve the Fire Marshal's access concerns.

Staff agrees with the HO's determination that the interconnectivity of the proposed West Amazon Drive improvements disperses traffic onto more than one public local street. The PUD also provides street stubs to the south and west for additional street connections. This standard is really about dead-end streets, where there is only one way in or out. This approach is consistent with the City's historical application of this standard. With the applicant's improvement of West Amazon Drive, the site can be accessed from the north via Martin Street or from the south via Fox Hollow Road. The issue here would have been if West Amazon Drive did not connect to Fox Hollow Road. The Applicant's improvements will complete the missing connecting link in the street system.

PC Action: Does the PC agree with staff that the HO did not err in finding compliance with the above approval criterion at EC 9.8325(6)(c), regarding traffic dispersal?

- ☐ Yes – Nothing further is required; this is consistent with how the City has administered this "19-lot" rule.

- ☐ No – The PC finds that the application does not meet this standard. Staff would

recommend the PC consider a reasonable condition of approval, such as not allowing the development of more than 19 lots until adjacent lands provide the additional street connections in alignment with the street stubs proposed by the PUD to the west and south.

RECOMMENDATION

Based on the available evidence and findings above, staff recommends that the Planning Commission overturn the Hearings Official's denial and approve the PUD with the following conditions, which are a combination of those recommended by the Applicant/HBA, the July 2012 staff report, and those modified or added by the HO:

Conditions of Approval:

1. The applicant shall submit a "Use Restriction" or "Codes, Covenants, and Restrictions" (CC&R's) to be recorded with the final plat that stipulates that the lots of the proposed subdivision shall be developed only with needed housing and uses accessory to that housing. The document shall be subject to prior review and approval by the City's Planning Director during the final plat review process. The document shall stipulate that the use restriction is enforceable by the City of Eugene and that any amendment to, or removal of, the established use restriction is subject to prior review and approval by the City's Planning Director.

2. The final PUD plans shall note the following: "The 30-foot perimeter buffer shall comply with EC 9.6210(7)(a)(1) through (5). The applicant may use existing vegetation to meet these requirements. The applicant shall show on its landscaping plan existing vegetation that it intends to reply on to comply with these requirements and proposed new landscaping that it intends to add to comply with these requirements."

3. The final PUD plans shall note the following restrictions regarding areas with slopes that meet or exceed 20 percent: "Areas identified as having 20 percent slopes shall not be graded, pursuant to EC 9.8325(5). Construction site management shall include protective fencing of these areas. Utilities in these locations will need to be installed without grading, such as with boring or other construction technique."

4. The final PUD site plans shall show cut and fill slopes associated with the street improvements and shall delineate public slope easements for those slopes that fall outside of the right-of-way. Slope easements will be more precisely determined during the PEPI permit process and on the plat.

5. Final plans for West Amazon Blvd. will show retaining walls where necessary to ensure that road improvements will not require grading of slopes 20% or greater outside the right-of-way for West Amazon Blvd. [Avenue]

6. Prior to final PUD approval, the applicant shall obtain /WR Standards Review approval for all public improvements, utility and access crossings proposed in the conservation areas.

7. The applicant shall dedicate the right-of-way necessary to connect Senger Lane and St. Clair Lane to adjoining properties. The applicant shall show the dedication on the final PUD plans.

8. The final PUD site plans shall show Canyon Drive as: having 20 feet of pavement width with curbside sidewalks, within 45 feet of right-of-way. The public improvements shall be constructed as part of the Privately-Engineered Public Improvement (PEPI) permit process.

9. The final PUD site plans shall show Senger Lane as: having 20 feet of pavement width with curbside sidewalks on the east side of the street only, within 45 feet of right-of-way; and terminating in a hammerhead turnaround, as proposed, within a temporary public easement. The public improvements shall be constructed as part of the Privately-Engineered Public Improvement (PEPI) permit process.

10. The final PUD plans shall note the following: "The structural design and construction inspection for private streets and alleys shall remain the developer's responsibility." Prior to final subdivision approval, the applicant shall submit certification by a licensed engineer that the structural design of the proposed private streets meets the applicable public design standards.

11. The final PUD plans shall provide a table identifying the lots that do not meet minimum lot standards, up to a maximum of 50% of the lots shown on final plans.

12. Acceptance of PUE is conditioned upon the applicant obtaining Standards Review approval for the proposed /WR resource area impacts and upon the infrastructure location being more precisely determined during the PEPI permit process. Approved PUE locations will be considered as part of the subdivision process.

13. The final PUD plans shall show the Exclusive Easement of the September 3, 1999 Purchase and Sale Agreement, including the Bridal Trail Easement.

14. Public improvements shall be constructed pursuant to EC 9.6505, subject to the design being approved by the City Engineer as part of the Privately Engineered Public Improvement (PEPI) permit process.

15. Prior to final subdivision approval, the applicant will be required to obtain a "Letter of Water Availability" from EWEB, which typically involves the design approval and improvement bonding with EWEB.

16. The final PUD plans and final subdivision plat shall note the following requirement: "At the time of development, each lot shall have its own filtration stormwater management system (e.g. flow-through planter) that is sized to meet the applicable stormwater development standards beginning at EC 9.6791, including Flow Control. Each lot owner will be

responsible for maintaining its stormwater management system consistent with EC 9.6797 Stormwater Operation and Maintenance."

17. During the PEPI permit process, the public stormwater system shall include City-approved proprietary stormwater treatment technology that meets the requirements of EC 9.6792 Stormwater Pollution Reduction.

18. The final PUD plans shall state that the development will occur in accordance with the GeoScience report recommendations.

ATTACHMENT 3: STAFF RESPONSE TO PLANNING COMMISSIONER'S QUESTIONS

The following questions (in bold) were asked of staff by the Planning Commission to assist in their decision-making process. Staff has provided a response to each question, as provided below, but notes that concerns over evidentiary issues precluded a direct answer to some of the questions.

Randy Hledik

1. **On page 9 of the letter *[Mr. Snyder's Appeal letter dated October 3]* (page 95 of the PC agenda), in the last paragraph Mr. Snyder states: "Thus the applicant should have articulated how these additional discharges, even if managed correctly under EC 9.6791-9.6797, will not damage drainage courses on-site or downstream….Instead, the Hearings Official misread the Code as allowing compliance with one criterion to constitute compliance with another, effectively rendering the language of EC 9.8325(13) superfluous". He maintains that these are "…*different* requirements pertaining to *different* impacts" which were not appropriately addressed by the HO. I'd appreciate staff's perspective …**

See the staff analysis and recommendation under Appeal Issue #9 provided in Attachment 2 of the December 3 AIS.

2. **On pages 10 and 11 of the letter *[Mr. Snyder's Appeal letter dated October 3]* (pages 96 and 97 of the PC agenda), Mr. Snyder's second instance of non-compliance with the Needed Housing code centers on the issue of traffic "dispersion points". Focusing on that aspect of EC 9.8325(6)(c) that requires dispersal of "traffic onto more than one public local street", Mr. Snyder argues that "… every local street in Eugene connects to other streets, creating multiple 'diversion points'….Only the interpretation that the street layout of the PUD itself must be connected directly to more than one local street gives any effect to the plain language of the code". Again, I'd appreciate staff's perspective …**

Staff responds to this Appeal Issue #11 in Attachment 2 of the December 3 AIS. Staff notes that the manner in which the HO applied the standard is consistent with previous decisions.

3. **In the HO Decision dated Sep 21, 2012, in the middle of page 13 (page 411 of the record), the HO discusses "skewing" of the square used to measure distance between contour lines. The HO arrives at two conclusions in the following statement: "… it could capture areas that are less than 20 percent slope, or miss areas that are 20 percent slope or greater". Where in the record is the evidence that the HO relied upon to arrive at these two determinations – most particularly, the second one, i.e., "… miss areas that are 20 percent slope or greater"?**

The evidentiary basis for the HO's conclusion here is unclear to staff. He appears to conclude that a square could be skewed but that a circle cannot. Staff disagrees; if a circle is "skewed" it is no longer a circle, and a square is no longer a square. In either case, "skewing" is a theoretical

possibility but there is no evidence in the record to conclude that either measurement method, as applied in this case, was actually skewed or where such skewing may have resulted in specific error in measuring slopes.

Steve Baker

4. **Please provide a copy of the Planned Unit Development -Tentative application form with the Contour Intervals section highlighted.**

The Applicant's tentative PUD application form is in the record. The contour information is listed on page 2308 of the 11/14/12 record provided to you.

5. **Approximately how long (approximate number of years is fine) has the Planning Department had a check box on the Planned Unit Development - Tentative form with a check box under Contour Intervals for choosing the City Bench Mark to be used to determine slope? How long has the check box "Five-foot contour intervals for ground slopes exceeding ten percent" been on this application form?**

There is nothing currently in the record that confirms how long this requirement has been in effect; however, the application form submitted by the applicant states in the footer that it was "Last Revised 7/2009." Staff believes that this portion of the form has actually been in effect for decades.

6. **Is the staff aware of other PUD applications submitted to your agency where the applicant checked one of the boxes under Contour Intervals on the Planned Unit Development - Tentative form and then contested the requirements to use the specified contour intervals selected in the check box?**

No.

7. **Please provide a copy of the South Hills Study which includes the USGS topo map sited by the applicant and related narrative in the study on the topo map.**

Neither the SHS nor the USGS topographic map is in the record. The Applicant only noted that their map that appears in the record on page 1194 (Exhibit V to the 8/22/12 Applicant letter) is "based on the USGS Slope Map." Providing any of the requested information would require the PC to take official notice of these documents, which staff recommends against, as doing so would introduce new evidence into the record.

8. **The USGS generally produced topographic maps for US and Oregon in only a few sizes in terms of scale and quantity. The largest number of topo maps produced by USGS (both in terms of scale and quantity) are the 7.5-minute, 1:24,000 scale quadrangle. Can you confirm that a 7.5-minute, 1:24,000 scale USGS topo map appears to be the map that is excerpted in the South Hills Study? If so, can you confirm the following information:**

(a) The quadrangle name of the USGS map used in the South Hills Study. This is identified in the upper right margin with the map series and type.
(b) The interval used for contour lines on this map?
(c) Can you bring a copy of this USGS quadrangle topo map to our next deliberation on Deerbrook PUD.

Staff cannot confirm the origin of the map or the subsequent questions related to the map. As noted above, providing a copy of the USGS quadrangle topo map would require the PC to take official notice of this document, which staff recommends against, as doing so would introduce new evidence into the record.

9. In accordance with Eugene Code 9.7007(2), the applicant held a meeting with the Southeast Neighbors, local neighborhood group, on January 10, 2012. The applicant was required to submit written notes from this meeting along with other materials. Based on this information, was the 47-lot alternate proposal presented at this meeting?

No, but it was provided in the public notice of the HO public hearing (see page 1895 of the record). Also refer to the staff recommendation on the related Appeal Issue #8, in Attachment 2 of the December 3 AIS.

10. A map from 1978 apparently defines the City's Goal 5 inventory. Can you please bring a copy of this map to our next deliberation on the Deerbrook PUD and provide a copy as a PDF file? Can you also bring a current map to the approximately same scale that shows current street layouts in the South Eugene.

The Scenic Areas Map appears in the record on page 1718. Staff will bring a color copy of this map to deliberations. Staff can also provide a .pdf of this map to the PC. In regards to a current map approximately to the same scale, staff believes this could constitute new evidence for the purpose of evaluating the Scenic Areas Map.

<u>Rick Duncan</u>
Asked for clarity regarding the 5' contours of the application form versus the 20' contours of the SHS and regarding the 35 lots of Envision Eugene versus the 47-lot proposal.

Staff distinguishes between the 5' and the 20' contour arguments in Appeal Issue #1 provided in Attachment 2. The Envision Eugene assumptions regarding 35 lots, compared to the 47-lot proposal, is explained in the December 3 AIS and is restated here.

> Although the Envision Eugene documentation is still in draft form (the City's current BLI was adopted in 1999), most testimony about the BLI has referenced the Envision Eugene work. Staff responded to the concerns about the BLI raised by the Home Builders Association (HBA) in the June 2012 Staff Report to the HO, noting that the analysis developed for the Envision Eugene process estimated that the subject property could reasonably accommodate 37 single-family dwellings. Although that analysis is not

adopted, nor does it regulate any minimum or maximum density that could ultimately be developed on the subject property, it provides context when considering arguments about the 75-lot development plan versus the 47-lot development.